Court No.2

(1) Writ Petition No.595 (M/S) of 2002

Anand Swaroop Kaushik and others …….. Petitioners

Versus

Madan Mohan Kaushik and others …….. Respondents.

(2) Writ Petition No.596 (M/S) of 2002

Anand Swaroop Kaushik and others ……. Petitioners

Versus

Madan Mohan Kaushik and others …….. Respondents.

……..

Hon'ble P.C. Verma, J.

Since both these petitions are connected with each other, hence they are being disposed of by a common order.

Writ Petition No.595 (M/S) of 2002 has been filed by the petitioners challenging the order dated 18.07.2002 passed in Civil Revision No.12 of 2001, by which the revisional court allowed the revision of plaintiffs. The revision was filed against the order dated 17.12.1999, by which the trial court decided the applications of the plaintiffs bearing application No.245-Ga/2 (objection against the Amin's report) and No.247 (application for amendment in the valuation clause of the plaint).

The Amin was appointed for determination of the valuation of the property in suit after framing of the issue on the point of valuation of the suit. Amin's report was submitted. Thereafter an objection against the Amin's report was filed bearing application No.245-Ga/2. It appears that before the order dated 17.12.1999 passed by the trial Court the plaintiffs moved an application for amendment in the valuation clause of the suit and this application was listed for disposal on the date on which the trial court disposed of the application No.245-Ga/2 i.e. the objection on the Amin's report and decided the whole issue on the point of valuation and directed the plaintiffs to amend the valuation clause. The revisional court

has given the reason for allowing the revision that the amendment application ought to have been decided first thereafter the issue on the point valuation should have been decided. Decision on the issue of valuation alongwith application for amendment was not justified in accordance with law. The hidden reason in the order is that after filing the objection on the Amin's report, the plaintiffs were deprived of leading his evidence on the point of valuation. Therefore, while rejecting the application for amendment of the valuation clause another date ought to have been fixed by the trial court giving an opportunity to the plaintiffs to lead the evidence on the objection filed by him, so that the issue on the point of valuation could have been decided properly. The plaintiffs have been deprived of the opportunity to lead the evidence on the objection filed by him. Therefore, the order passed by the trial court suffers from miscarriage of justice which could very well be revised under Section 115 C.P.C. Thus, in my opinion, the order passed in revision does not suffer from any infirmity of law as it is in accordance with the provisions of Section 115 C.P.C. as noticed above.

The writ petition lacks merit and is hereby dismissed.

Sine the revisional order has been affirmed, therefore the appellate order dated 18.07.2002 passed in Civil Appeal No.15 of 2001 cannot be interfered with and the suit is to be tried after the framing of issues. The trial Court is directed to decide the issue of valuation within a period of fifteen days from the date of production of certified copy of this order. The writ petition No.596 (M/S) of 2002 is disposed of accordingly.

(P.C. Verma, J.)

23.09.2002
P.Singh